

## CITY COUNCIL PROCEEDINGS

Tuesday, October 5, 2010

### 1. CALL TO ORDER AND ROLL CALL

Mayor Osborne called the regular October 5, 2010 Council meeting to order at 6:02 p.m. in the Council Chambers.

Those present were: Mayor Osborne, Deputy Mayor Wilson and Council Members Ageton, Appelbaum, Becker, Cowles, Gray, Karakehian and Morzel.

Mayor Osborne made an announcement that October 25 at 5pm was the deadline to apply for vacancies on the Beverages Licensing Authority, the Board of Zoning Adjustment and the Library Commission.

#### A. STATE OF THE COURT REPORT – 6:03 P.M.

Municipal Court Judge Linda Cooke provided her state of the court report noting that the court had a very fast 2-4 week turnaround time on traffic tickets and other offenses. Regarding the young adult category (18-25) quality of life violations (noise, nuisance party etc...) she commented that in 2010 the offenses went down and she thought it may be attributed to the University's new party registration process. Fireworks violations were only slightly above average and seemed to spread over a longer period of time this year. New this year, there was a Municipal laws class to educate CU students about the laws most commonly violated in their age group.

### 2. PUBLIC PARTICIPATION and COUNCIL/STAFF RESPONSE – 6:15 P.M.

1. Dan C. Winters spoke in opposition to the immigration and customs enforcement issue (ICE).
2. Seth Brigham spoke to the council rules of decorum issue and noted that, as proposed now, they are more reasonable but he still felt they were a waste of time. He was opposed to the Mayor being able to remove someone from the meeting. Please include constitutional language about free speech. He spoke in support of reviewing the snow shoveling issues in the city and suggested more leniency for the elderly/disabled population.
3. Erika Blum with VOICE (Voices of Immigrant Children for Education Equality) noted that collaborative relationships with law enforcement and civilians needed to be maintained and the ICE program threatened to undermine all of that. Protection for victims of domestic violence would disappear as well. Secure communities sets quotas for deportations each year and this program would not help the city of Boulder.
4. Andy Schultheiss on behalf of Congressman Polis spoke regarding secure communities and noted that this was not comprehensive immigration reform or passage to citizenship. This was a very specific law enforcement tool developed 3 years ago intended to catch violent criminals by creating another stop on the information path. He commented that the program interacted poorly with Colorado Law SB90. The program has the potential of severely impacting the domestic violence reporting among immigrant communities. Congressman Polis' office respectfully asked Council to consider the ramifications of the program.

5. Violeta Chapin a law professor at CU Law School and prior public defender in Washington, D.C. agreed with many Sheriff Deputies and law enforcement officials that the ICE program is a bad idea. It encouraged racial profiling and witnesses to crimes would not report the crimes. The program violates civil rights and ultimately harms effective community policing. Please oppose the secure communities program.
6. Peter Richards provided a handout to City Council and spoke to the Broadway/Euclid underpass project near the University Memorial Center. He noted there was limited public input with a pre-determined design only open to small tweaks. Traffic and pedestrian safety would not be improved.
7. Steve Callander representing the Human Services Alliance spoke in favor of Boulder County ballot issue 1A. He encouraged Council support for consent agenda item 3G in support of the County's human services ballot item.
8. Stephen Colby also spoke to the Broadway/Euclid project and supported the staff proposal. He strongly urged Council to continue to support the project as it developed.
9. Julie Gonzales representing the Colorado Immigrant Rights Coalition also spoke in opposition to the ICE program. Their group met with Governor Ritter and provided recommendations specifically around protecting victims of domestic violence and screening out level 1 offenses (felonies/violence). She hoped Boulder would opt out of the secure communities program.
10. James Lamb representing VOICE agreed with the previous speakers regarding the secure communities program and noted local law enforcement would in essence become enforcers of the Federal immigration law.
11. Hanna Johnson spoke in opposition to the ICE program noting that it was making a business out of people's lives.
12. Carolyn Dulchinos also spoke in opposition to the secure communities program as it was an abuse of civil liberties. This type of enforcement action is devastating to communities.
13. Elizabeth Allen spoke in opposition to the secure communities program.
14. Dawn Joyce spoke in support of the County's human services ballot item and encouraged council to support the ballot measure.
15. Sergio Guitierrez III, a former CU student and Boulder resident, spoke in opposition to the secure communities program and stated several legislative flaws. This would only cause disunity in the community
16. Wendy Kahn provided an update on the status of the U.S. Cycling monument scheduled to be built in North Boulder Park; [www.uscyclingmonument.com](http://www.uscyclingmonument.com).
17. Robert Cluster spoke about the secure communities program noting that once again the City was getting involved in a big national immigration controversy. He supported immigration laws and believed that illegal aliens should be deported when identified.
18. Melissa Khat, a CU student, asked council to opt out of the secure communities program supporting the ACLU's position that the program was ineffective.

City Council Response: - 7:00 p.m.

Deputy Mayor Wilson spoke to the Broadway/Euclid project noting that the vast majority of his neighbors on the Hill supported the project and the RTD bus stops would be dramatically improved. This was the busiest bus stop in the RTD system.

Council Member Karakehian noted that he felt staff did a great job recently at a public meeting in addressing the issues related to the Broadway/Euclid project.

Council Member Cowles clarified that his request about the secure communities issue was to ask staff to explore how this would affect the Boulder community and not to open up an immigration debate.

City Manager Response:  
None.

City Attorney Response:  
None.

3. **CONSENT AGENDA:** - 7:04 P.M.

- A. **CONSIDERATION OF A MOTION TO ACCEPT THE SEPTEMBER 7, 2010 CITY COUNCIL MEETING MINUTES.**
- B. **CONSIDERATION OF A MOTION TO CALL A SPECIAL MEETING ON TUESDAY, OCTOBER 12 FOR A PUBLIC HEARING AND COUNCIL ACTION ON THE AREA III PLANNING RESERVE FOR THE 2010 BOULDER VALLEY COMPREHENSIVE PLAN UPDATE.**
- C. **CONSIDERATION OF A MOTION TO ACCEPT THE SUMMARY OF THE AUGUST 24, 2010 STUDY SESSION ON THE SOUTH OF DOWNTOWN AREA (SoDA), DOWNTOWN ZONE DISTRICT, AND HEIGHT MODIFICATIONS CITY-WIDE..**

Council Member Becker asked to pull agenda item 3C. Council agreed to pull the item from the agenda and submit additional comments to Sam Assefa within one week. The amended agenda item would then come back at a future business meeting.

- D. **CONSIDERATION OF A MOTION APPROVING THE PROPOSED 2011 BUDGET, OPERATING PLAN AND BOARD NOMINATIONS FOR THE DOWNTOWN BOULDER BUSINESS IMPROVEMENT DISTRICT.**

Council Member Gray raised concern about appropriating money prior to the budget approval and prior to the election outcome. City Attorney Tom Carr clarified that this in no way appropriated any funds. That was done in the course of the budget adoption.

Council Member Appelbaum suggested council include a discussion about the process of DBI Board member appointments in the upcoming Boards and Commissions study session.

- E. **CONSIDERATION OF MOTIONS TO (A) RENEW EMPLOYMENT AGREEMENT OF BOULDER MUNICIPAL COURT ASSOCIATE JUDGE JEFFREY CAHN; AND (B) AWARD 2.5% MERIT INCREASE TO ASSOCIATE JUDGE CAHN.**

- F. CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION APPROVING AND AUTHORIZING AN APPLICATION FOR A GREAT OUTDOORS COLORADO LOCAL PARKS & OUTDOOR RECREATION MINI GRANT.
- G. CONSIDERATION OF A MOTION TO ADOPT A RESOLUTION SUPPORTING BOULDER COUNTY'S HUMAN SERVICES BALLOT ITEM.
- H. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7757 AUTHORIZING THE CITY MANAGER TO EXECUTE A DEED OF VACATION TO VACATE THE EXISTING WALDEN CIRCLE RIGHT-OF-WAY LOCATED ENTIRELY WITHIN THE BRIDGEWALK DEVELOPMENT LOCATED AT 602 WALDEN CIRCLE. (#LUR2010-00016) APPLICANT/PROPERTY OWNER: BOULDER HOUSING PARTNERS.
- I. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7756 TO REVISE THE FLOODPLAIN REGULATIONS UNDER SECTIONS 9-3-3 THROUGH 9-3-6 AND 9-16-1, B.R.C. 1981
- J. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7760 AMENDING SECTIONS 1-2-1 AND 3-1-1 REGARDING DEFINITIONS; SECTIONS OF CHAPTER 3-2 "SALES AND USE TAXES" REGARDING CONSTRUCTION USE TAXES, TAXATION OF CONSTRUCTION EQUIPMENT, AND DEADLINE FOR SUBMITTING REBATE REQUESTS; SECTION 4-4-2, REGARDING THE DEFINITION OF "CONTRACTOR;" SECTION 4-20-4 REGARDING BUILDING CONTRACTOR LICENSE AND BUILDING PERMIT FEES; SECTION 10-5-2(H) REGARDING WORK EXEMPT FROM BUILDING PERMITS, AND SETTING FORTH RELATED DETAILS.

Council Member Gray moved, seconded by Appelbaum to approve consent agenda items 3A through 3J with item 3C removed from the consent agenda to be amended and return at a later date. The motion carried unanimously 9:0. 7:18 p.m.

4. **CALL- UP CHECK IN: - 7:18 P.M.**

No interest was expressed.

**ORDER OF BUSINESS**

5. **PUBLIC HEARINGS: - 7:19 P.M.**

- A. SECOND READING AND CONSIDERATION OF A MOTION TO ADOPT ORDINANCE NO. 7761 AMENDING SECTION 8-2-13, "DUTY TO KEEP SIDEWALKS CLEAR OF SNOW," B.R.C., 1981.

Jeff Arthur provided the presentation on the item, giving background about the current enforcement practice. Staff considerations included efficient use of resources, effective removal of snow, the parking ticket model and a 2010 implementation timeframe.

Council Member Morzel asked about busy street intersections where cars pass by and create additional slush snow for removal. Mr. Arthur responded this was generally at the officer's discretion. She indicated more thought should go into that. Ms. Morzel suggested there be a letter posted online that landlords could send to tenants to explain the change in responsible parties. Mr. Arthur indicated there were separate ordinances that dealt with down trees and branches.

Council Member Becker suggested a pilot project for signage. She suggested placing signs at strategic locations to see if there was any impact. She asked if there was anything in the code that required landlords to state in the lease that tenants were required to maintain snow removal on adjacent sidewalks. Mr. Arthur responded that was at the landlords discretion whether the tenant or a private contractor should be responsible. Joint liability is the current legal stance. Mr. Becker asked if the warning had been designed yet and suggested it include information about where seniors could get help. Staff noted that the older door hangers did provide information for icebusters and the door hanger would be redone. Ms. Becker asked if any thought were given to strategic enforcement (i.e. routes to school). She felt there was an opportunity to include schools in some partnering to make it safer. Staff clarified that there was a map of complaints and they tried to determine the highest priority first, proposing a mixed approach, focusing on the highest priorities first. Staff would look at how to involve schools districts perhaps via the safe routes to school program. Ms. Becker commented that she would expect abatement cases to go up. Staff hoped compliance would go up as well and noted there weren't many repeat offenses. Staff was trying to streamline enforcement efforts without in-person ticketing.

Council Member Cowles was interested in knowing whether consideration was given to making these administrative violations rather than court violations with a hearing officer rather than criminal offenses. Tom Carr indicated combining abatement with the ticketing process provided opportunity for abatement without creating an entirely new process. Mr. Cowles mentioned the homes on Broadway between Linden and Norwood where the houses on the hill don't have Broadway addresses but they have a duty to clear sidewalks that may be a ½ mile walk to get to. Staff clarified that yes, that was how the current ordinance was written.

Deputy Mayor Wilson clarified the options were 1) give a ticket, or 2) abatement. He asked staff to describe, in big snowstorm, what would be the process an enforcement officer would go through. Staff responded that officers are in education mode initially. They want to get the warning out there. Mr. Wilson asked when a simple ticket would be written versus when a more extreme step of abatement would be needed. Staff noted that no warning was required for a ticket to be issued. The typical charge was \$100 if it was mailed in. Most abatements were in that price range. Mr. Wilson urged the importance of getting the current language clear enough that it included commercial properties.



Council Member Karakehian wanted to see more discussion about the city doing snow removal and then fining the public with a bill or publishing names of offenders.

Council Member Appelbaum clarified the legality of the landlord/tenant responsibility issue. The City Attorney noted that tickets were generally going to be issued to the person who answered the door and if there continued to be an issue city staff would contact the property owner. The dual responsibility assists the enforcement officers when they are out and about. Mr. Appelbaum commented that the implementation was the most important. He asked how large snowfalls would be handled, particularly when asking someone to clear 3 feet of snow down to the pavement and perhaps the weather would be warmer the next day and melt it. Staff responded that again, officer discretion is used in issuing tickets.

Suzy Ageton agreed with Council Member Appelbaum's comments about excessive snowfall. She hoped extenuating circumstances were taken into consideration. She raised concern about enforcement outside of the enforcement priority areas being complaint based only. She asked whether any kind of systematic review was done out in neighborhoods regardless of whether complaints were received. She felt this would be a more equitable system to encourage compliance. Staff commented that Officers enforce other ordinances and are out and about during the day and able to find offenders.

Council Member Morzel commented that consideration by officers should be given to people who don't shovel as much but have made an attempt at placing salt or sand in an area.

The public hearing was opened:

1. Dan Winters commented that Council should know enforcement doesn't work. Real change is needed. He agreed with Council Member Ageton's point about officers not only going where they are called but to other locations as well. Consider an off duty officer to assist with enforcement. Please implement a more comprehensive review.
2. Karen Simmons commented that many sidewalks on the Hill never got shoveled particularly at the fraternity houses. She is now a landlord and the lease never mentioned that she was responsible if students didn't shovel as per their lease. Sidewalks right up against the street are a challenging as they would have to shovel again and again. She was also concerned if the tenant didn't honor the ticket and she became responsible as the landlord.
3. Sheila Horton commented about wind creating problems with snow removal, drifting snow over the sidewalks. She strongly urged Council to consider the 24 hour rule as it was clear, easy and reasonable. She preferred a warning prior to a summons and abatement.
4. David Welker agreed with the previous speaker about windy conditions. Enforcement officers should have a list of guidelines to follow. He also asked that consideration be given to the month of March when snow storms arrive and the students are gone.

5. Tim Wheat with the Center for People with Disabilities indicated strong support among the community to change the snow enforcement. The disabled are typically very dependent upon sidewalks. He didn't like the 24 hour rule because the snow could stay there all week.

There being no further speakers the public hearing was closed.

Mayor Osborne suggested utilizing the web, twitter or other signs for notice. She also suggested a snow phone line or email hotline for complaints. Staff responded that a web based complaint system already existed.

Council Member Becker commented that improvements in the administrative fee and publication on the web was good. She would like to see a flyer in the water bill. She liked having one notice before abatement. She supported the existing cut off time and wanted the city's limited resources used strategically. Let's not ticket just because there were no complaints in that area.

Council Member Cowles commented that enforcement must be more effective than it had been in the past. He suggested a fee be assessed for the warning. He recommended a revenue neutral system and was interested in moving to the abatement program.

Council Member Appelbaum indicated he preferred the 24 hour language for simplicity and thought it was more practical. He commented that everyone deserved a morning and an evening to shovel in case they have to work early that day.

Council Member Morzel moved, seconded by Gray to adopt Ordinance No. 7761 amending section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981.

Council Member Morzel moved, seconded by Appelbaum to amend the main motion to allow 24 hours for snow removal from the time the snowfall ends as reflected in the buff handout provided by the City Attorneys office. The motion failed 3:6; Ageton, Appelbaum and Morzel in favor.

Vote was taken on the main motion to adopt Ordinance No. 7761 amending section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981. The motion carried 8:1, Appelbaum opposed.

## 6. **MATTERS FROM THE CITY MANAGER: - 9:16 P.M.**

### **A. ENERGY ROUNDTABLE – DISCUSSION REGARDING BASELINE DATA.**

Jonathan Koehn introduced the item with some background about the baseline data that would be needed to develop pathways forward. He provided a handout that was previously e-mailed to Council Members. Mr. Koehn reviewed the key baseline data questions and what kind of information would be needed (and from whom) to answer those questions. He then spoke to data needs related to municipalization and the analysis that would be needed to understand the feasibility of creating a municipal utility. He clarified that municipalization could potentially be

a means to an end but was not the goal in itself. He then showed a list of data requests that the city should consider making of Xcel energy. He then suggested staff could hire a consultant to begin developing a scenario planning tool to assist in efforts to explore alternative energy investments and test alternative assumptions.

Tom Carr then spoke to the Xcel data issue and noted that the city's rights under the franchise agreement would expire at the end of December 31, 2010 when the franchise expired. He suggested making the data requests of Xcel as soon as possible prior to franchise expiration. The bigger issue of how decisions are made based on real data in the future remained an issue.

Deputy Mayor Wilson raised two items to include in the baseline data, 1) the seasonality of Boulder's load and 2) the power factor (ratio of real to apparent power). He commented that getting good data from Xcel would not be easy.

Mayor Osborne commented that she wasn't comfortable with the baseline data with regard to how it supports the bigger picture of the different scenarios. She would like to be at some decision point by August of 2011.

Council Member Appelbaum agreed that scenarios were needed as it was the missing piece of the puzzle. The question to be answered was - what are the possible outcomes? The only way to respond to naysayers about municipalization was to have adequate data that makes the city's analysis credible.

Council Member Ageton noted the data and baseline analysis appeared very focused on municipalization. She didn't see a discussion about data would be needed if a new contract were being considered. She wondered if Xcel be more receptive if there was a clear perception that the City may be considering a new contract. She suggested it be very clear if the city were only focusing on one path.

Staff clarified there was no pre-determined outcome at all. The data gathering helped provide evidence and support for the various pathways.

Council Member Cowles urged the development of a good set of assumptions. The city could probably find valuable data about the cost of electricity from other sources. He suggested the disaggregation of the costs of generation, transmission, distribution and then administration and overhead. Those needed to be known for all scenarios to deal with the Xcel franchise itself.

Council Member Morzel commented that it was not just municipalization and not just a new franchise with Xcel, but it was the third possibility that was most appealing such as community choice aggregation

Mayor Osborne noted that in addition to Macon's three, she found distributive generation potential intriguing which could be a fourth option.

Tom Carr reminded Council that staff was continuing to work on the "life without a franchise" in preparation for January 1, 2011 which was actually going to be quite similar to life with a franchise.



Deputy Mayor Wilson suggested a third party analysis of the R.W. Beck study would be a good choice. He liked the idea of an analysis based on some scenarios in the R.W. Beck study where costs could be assumed for a distribution system etc...

7. **MATTERS FROM THE CITY ATTORNEY: - 10:10 P.M.**

None

8. **MATTERS FROM MAYOR AND MEMBERS OF COUNCIL: - 10:10 P.M.**

**A. POTENTIAL CALL-UPS:**

1. **5290 LONGBOW DRIVE – COVIDIEN (FORMERLY KNOWN AS VALLEYLAB) SITE REVIEW AMENDMENT AND CELESTIAL SEASONINGS PUD AMENDMENT FOR LOT 1 ONLY, TRANSFERRING DENSITY RIGHTS TO COVIDIEN. INFORMATION PACKET DATE SEPTEMBER 29, 2010. LAST OPPORTUNITY FOR CALL-UP IS OCTOBER 5, 2010. APPROVED BY THE PLANNING BOARD 6-0.**

No action was taken on this item.

2. **SITE REVIEW APPROVAL FOR 3100 PEARL STREET. INFORMATION PACKET DATE SEPTEMBER 29, 2010. LAST OPPORTUNITY FOR CALL-UP IS OCTOBER 5, 2010. APPROVED BY THE PLANNING BOARD 6-0.**

No action was taken on this item.

**B. COUNCIL COMMITTEE UPDATES:**

1. **RTD/FasTracks Report** – Mayor Osborne  
Mayor Osborne commented that the US 36 Mayors and Commissioners Coalition would meet with Phil Washington that Thursday to focus on the vision for RTDs concepts about bus rapid transit. She also mentioned a 2012 tax increase for FasTracks that would be smaller.
2. **Dairy Center Update** – Council Member Karakehian  
Council Member Karakehian provided council members with a handout and reported that the Dairy had broken ground for the Boedecker Theater which would seat 65 people. Western Disposal provided \$300,000 as seed money for the construction of the new building façade.
3. **Others**

**Rocky Flats/Jefferson Parkway Section 16 property:**

Council Member Morzel spoke to the Rocky Flats/Jefferson Parkway section 16 issue and provided a handout to City Council. She indicated the National Resources Damages Trustees voted to reopen the RFP process so that a new proposal could be considered. She expressed several concerns with the newest proposal that were also shared by the local group of governments (Boulder County, Golden and Superior). Despite these

issues, the group is still hopeful to continue to work positively with the broader vision. Their next meeting would be in December.

Boulder Housing Partners:

Council Member Ageton provided an update on Boulder Housing Partners indicating they had received a grant from HUD's "Rental Assistance for Non-Elderly Americans with Disabilities Program" with 100 new vouchers and permanent funding of \$763,000 annually. Boulder was one of two cities in the state to receive the grant. BHP would also be applying for a HUD program called the "Moving to Work" demonstration project. It provides opportunities to the designated housing authority to design and test innovative ideas. The program would allow BHP to bypass existing HUD rules. The application would be submitted in November. She commented on the Lee Hill housing joint partnership with the Boulder shelter which would provide 31 units of permanently supported housing. The Red Oak Park project would provide 59 units that were 2, 3, and 4 bedroom homes. The first homes would be leased in Feb. 2011 and all would be completed by October 2011. The High Mar project site review plan had been submitted and would be an age restricted senior program with 59 units.

Council Member Morzel moved, seconded by Ageton to suspend the rules and continue the meeting at 10:30 p.m.; The motion carried 7:2, Becker and Karakehian opposed.

Council Member Cowles made a brief comment about the RTD Goldline station project at the Jefferson County courthouse that would go to Eagle County airport. He indicated he would send council the executive summary.

Council Member Cowles requested a nod of 5 from council to ask staff to consider the ICE secure communities program. Council gave a nod of five for the city's law enforcement and policy advisor staff to look into the local impacts of that program. There was agreement that information about the ICE program would be useful at the upcoming legislative agenda study session discussion on November 9. Deputy Mayor Wilson suggested it would be great for Sheriff Pelle to provide his input as well.

**C. CONSIDERATION OF A MOTION TO APPOINT A NEW MEMBER TO THE WATER RESOURCES ADVISORY BOARD. – 10:43 P.M.**

Nominations were opened:

Council Member Becker nominated Vicki Scharnhorst.

Council Member Karakehian nominated Dan Johnson.

Nominations were closed.

By flip of a coin it was determined that the vote would be taken alphabetically.

Vicki Scharnhorst received 7 votes

Dan Johnson received 2 votes

Council Member Gray moved, seconded by Appelbaum to ratify the appointment of Vicki Scharnhorst to a term through March 2011 on the Water Resources Advisory Board.

9. **PUBLIC COMMENT ON MATTERS:**

None.


10. **FINAL DECISIONS ON MATTERS:**

Vote was taken on the motion to ratify the appointment of Vicki Scharnhorst to a term through March 2011 on the Water Resources Advisory Board. The motion carried unanimously, 9:0.

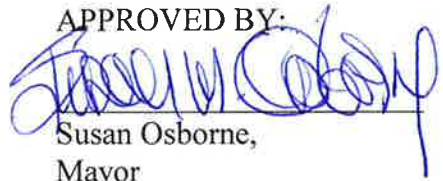
11. **ADJOURNMENT**

There being no further business to come before Council at this time, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED AT 10:48 P.M.

ATTEST:

  
Alisa D. Lewis,  
City Clerk

APPROVED BY:

  
Susan Osborne,  
Mayor